IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12211 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAHIRKHAN MAKSUDKHAN PATHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR ASHOK YAGNIK for Petitioner(s) : 1,
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 11/08/2006

ORAL JUDGMENT

1. This petition is filed by Jahirkhan Maksudkhan Pathan challenging the detention order dated 18.03.06 passed by District Magistrate, Bharuch against his

brother, Jahirkhan Maksudkhan Pathan. By the aforesaid order, the detenu is detained as a Bootlegger under preventive detention by exercising powers under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

2. In the grounds of detention, there is reference to a solitary case pending against the detenu under the provisions of the Bombay Prohibition Act for dealing in foreign liquor. It is alleged that the detenu was found to be in possession of large quantity of bottles of illicit foreign liquor. The detenu, was, therefore, arrested under the provisions of the Bombay Prohibition Act. The detaining authority has found that the activities of the detenu are such that it will prejudicially affect public health.

3. Learned advocate for the detenu submitted that except the solitary case, there is no other material, and statement of not even a single witness has been recorded in the matter, alleging that the activities of the detenu is prejudicial to public health. It is also submitted by the learned advocate for the detenu that there is no material to show that the detenu was dealing in the so called liquor or that the detenu has tried to harm public health.

5. Learned advocate for the detenu relied on the judgment of a Division Bench of this Court, [Coram:

M.R. Calla & R.R. Tripathi] in the case of Ashok Balabhai Makwana v/s. State of Gujarat in LPA No. 223 of 2000 wherein the Division Bench held as under in paragraph 5 of the judgment:

> "If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public

order or breach of public health is concerned, credible material has to be there. In the case of K.S. Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose

> of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the mater keeping in view the observations made by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants."

6. In the instant case, except for the fact that one case is registered against the detenu , there is

no other material worth the name to come to a conclusion that the activities of the detenu will prejudicially affect public health of the community.

7. Having gone through the records, there is nothing to show that the activities of the detenu is likely to prejudically affect public health. Statement of any witness is not recorded. There is no credible material from which it can be said that the activities of the detenu is prejudical to public health. At the most it can be said that the activities of the detenu is in breach of law and order, and not public order. The petition is required to be allowed as from the available records it cannot be said that the activities of the detenu is against public health.

8. In the result, the petition is allowed. Order of detention passed against the detenu dated 18.03.06 is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the detenu makes a voluntary statement that the detenu will not leave the limits of Dahod Town area upto 31st October 2006 except for attending the criminal case. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concerned authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

Rule made absolute accordingly. No order as to costs.

[P. B. MAJMUDAR, J.]

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